IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELALTE SIDE

APPEAL FROM ORDER NO.477 OF 2004
WITH
CIVIL APPLICATION NO. 652 OF 2004
AND
APPEAL FROM ORDER NO.843 OF 2004
WITH
CIVIL APPLICATION NO.894 OF 2004

A. O. No.477/04 :

Dattatraya Pandurang Chaudhary & Anr. ...Appellants.
Vs.
Sau. Anuradha Ramesh Mojad (Patil) & Ors. ... Respondents.

....

Mr. M.S. Karnik for the Appellants.
Mr.Rajeshirke for Respondent Nos.2 to 5.

.....

A.O. No.843/04 :

Arjun Soma Chandramore & Anr. ...Appellants.
Vs.
Anuradha Ramesh Mojad (Patil) & Ors. ...Respondents.

.....

Mr. S. A. Rajeshirke for the Appellants.

.....

CORAM : DR. D.Y. CHANDRACHUD, J.

December 20, 2005.

P.C.:

Appeal from Order No.477 of 2004 has been instituted by the Sixth and Seventh Defendants, while Appeal from Order

No.843 of 2004 has been instituted by the First, Second, Third and Fourth Defendants to a suit for specific performance. The impugned order of the Trial Court was passed on 21st January 2004 and by that order the Appellants to these appeals have been restrained from disturbing the possession of the Plaintiff and from creating any third party interests and from alienating the suit property until the decision of the suit. The order of the Learned Trial Judge would show that Defendant Nos.6 and 7 who are the Appellants before the Court in Appeal from Order No.477 of 2004 had in fact, furnished an undertaking that they would not make any new construction, nor would they alienate the property to any third party and that they would maintain status quo at the site.

For convenience of reference, it would be appropriate to refer to the parties by their description in the suit. The land in question admeasures 52 Ares and is stated to be an ancestral property of Defendant Nos.1 to 4. On 5th January 2001, a Power of Attorney was executed by Defendant Nos.1 to 4 in favour of Defendant No.5. Acting on the strength of the Power of Attorney, Defendant No.5 entered into an agreement to sell with the Plaintiff who is the First Respondent here, at and for a consideration of

Rs.6 lakhs of which an amount of Rs.2 lakhs is stated to have been paid by way of earnest money. The agreement to sell recites that possession has been handed over to the Plaintiff. Subsequent to the agreement to sell with the original Plaintiff, a development agreement was entered into by Defendant Nos.1 to 4 in favour of Defendant Nos.6 and 7 on 14th March 2001. It is alleged that the Plaintiff obtained knowledge of the latter agreement on 30th October 2001. The Plaintiff lodged a Police complaint on 30th October 2001 and then issued an Advocate's notice complaining that Defendant Nos.6 and 7 had unlawfully encroached upon the land by the construction of a small shed which was in progress. The suit for specific performance having been instituted, the Trial Court was moved by an application for an interlocutory injunction. The Learned Trial Judge in his order dated 23rd January 2004, came to the conclusion, on the strength of the agreement to sell that was entered into with the Plaintiff on 19th January 2001 that the Plaintiff is in possession and that consequently an order of injunction must be issued.

On behalf of the Appellants it has been submitted that the Learned Trial Judge has not had regard to various other

documents which had been adverted to in para 13 of the impugned order and it was alleged that those documents including 7x12 extracts, would show that the Appellants are in possession. At this stage, for the purposes of deciding the issue of interim relief, it is apparent from the record that there is a prior agreement in favour of the original Plaintiff of 19th January 2001 which records that possession has been handed over to the Plaintiff. Defendant Nos.6 and 7 claim under a subsequent agreement for development. At this stage, on the basis of the material on the record, it is not possible to arrive at any conclusive finding in regard to whether it is the Appellants who are in possession. The Plaintiff had lodged a complaint that the Appellants have attempted to encroach upon the land which forms the subject matter by constructing a shed but, this again, the Learned Trial Judge held, would not establish that possession of the entire land is with the Sixth and Seventh Defendants. The Sixth and Seventh Defendants, as noted above, have given an undertaking not to create third party interests. This being the position, in my view, the ends of justice would be subserved if the trial of the suit is expedited and the Learned Trial Judge is requested to dispose of the suit preferably by 30th September 2006. Since the interim order

has held the field since 21st January 2004, now almost for a period of two years, the ends of justice would be met with an order of expedition of the suit simpliciter. The Appeals are accordingly disposed of in these terms.

In view of the disposal of the appeals, the Civil Applications do not survive and are accordingly disposed of.

.....